



ROYAL NORWEGIAN MINISTRY
OF LABOUR AND SOCIAL AFFAIRS

EFTA Surveillance Authority
Rue Belliard 35
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BELGIUM

Your ref

Our ref

Date

13/3362-

20 June 2018

Letter of formal notice to Norway concerning posting of workers - Reply from the Norwegian Government to the letter of 24 May 2018 from the EFTA Surveillance Authority

Introductory remarks

1. Reference is made to The EFTA Surveillance Authority's letter of formal notice of 25 October 2016 concerning posting of workers, the Norwegian Government's reply of 20 January 2017, and to the subsequent correspondence, latest The Authority's letter of 24 May 2018. In its letter of 20 January 2017, the Government expressed that the main responsibility of finding a solution in this case lies on the social partners, and that the social partners intended to negotiate on the matter within the framework of the ordinary wage settlement round which would take place in the spring 2018. In its letter of 24 May 2018 the Authority has asked for information about the status of the case.
2. The scheme for general application of collective agreements is based on the prerequisite that the social partners play a key role. This is reflected in different aspects. The social partners' collective agreements form the basis of the Regulations on general application. Further, it is the organizations' responsibility to request general application when they consider it necessary. The social partners are also represented in the Tariff Board, which decides general application in the individual cases. The Tariff Board is an independent body. It is important that amendments and adjustments in the scheme have a solid foundation among the social partners.

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Regarding the work of the social partners

3. In the maritime construction industries, there has been a commission work in progress since 2016, related to the provisions concerning travelling in the Engineering Industry Agreement. The Federation of Norwegian Industries and The Norwegian United Federation of Trade Unions decided to extend the commission's mandate to include the questions that have been raised in the letter of formal notice. Those questions were thus subject to negotiations in the wage settlement round this spring.
4. The negotiations were concluded 8 April 2018, and the results of the negotiations were finally adopted after a ballot among the members of the organizations 26 April 2018. In early May, the Government had a meeting with the social partners where they gave a more detailed explanation about the outcome of the negotiations.
5. The Norwegian United Federation of Trade Unions and The Federation of Norwegian Industries have agreed on some amendments in the provisions concerning travelling in chapter 8 of the Engineering Industry Agreement. The amendments clarifies inter alia when those provisions should apply, but the amendments do not directly affect the provisions on compensation and coverage of costs. The new agreement is enclosed.
6. There are separate processes in each of the affected industries. This is related to different interests, and to different time schedules for the negotiations. In the construction sector there is still work in progress between the social partners, aiming to find compromise solutions on the questions raised by the case.

Further steps

7. The regulations on general application are of limited duration, and in the case any of the organizations request continuation of the Regulation, the legal and factual basis for declaring a collective agreement generally applicable is subject to a new assessment. The Tariff board has received requests for continuation in the industries affected by this case. It is expected that the Tariff Board will decide those requests during the autumn of 2018.
8. It is for the Tariff Board to consider the issue of compensation for travel, board and lodging in the future cases concerning general application of collective agreements. The Tariff Board has a relatively wide margin of discretion regarding the necessity to declare collective agreements generally applicable, and if so, which provisions in the collective agreement should be included in the Regulations. As mentioned, it is a fundamental prerequisite for the scheme for general application of collective agreements that the decisions are based on the provisions in the agreement. The Tariff Board must in any case ensure that their decisions are in line with the EEA law, based on the current legal situation.

9. The Directive 96/71/EC is being revised and it is expected that EU will adopt amendments in the Directive by the end of June 2018. Some of the amendments clearly affect the questions raised in our case, especially those concerning the concept of pay, as well as the new rules on travel, board and lodging expenses. This seems to imply that the legal situation is changing. The Government assumes that the revision of the Directive will have implications on the legal framework for future decisions on the general application of collective agreement, with regard to rules on compensation for travel, board and lodging expenses.
10. Furthermore, the Government supposes that the revision of Directive 96/71/EC will also have implications for The Authority on the further follow-up of this specific case.
11. The Government considers that it will be appropriate to follow the further handling of the case by the Tariff Board.

Yours sincerely

Ragnhild Nordaas
Director General

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Deputy Director General

This document is signed electronically and has therefore no handwritten signature

Enclosure